CF0000061480

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR M.P.

Criminal Appeal No. 1293 of 1997.

APPEAL UNDER SECTION 374(2) OF CRIMINAL PROCEDURE CODE.

APPELLANT (On jail) : Kamta Prasad aged about 25 years, son of Ajeet Jharia, resident of Dhanuharpara, Purani Basti, Tah. Korba District Bilaspur M.P.

- versus -

NON-APPELLANT : State of Madhya Pradesh.

| Conviction | Sentence. |
|---|---|
| U/S 302 of I.P.C. | R.I. for life. |
| U/S 376 of I.P.C. | R.I. for ten years and fine of Rs. 500/- in default six months R.I. (Sentence run concurrently. |

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Filed on 1.7.97
by Shri H. Sen Advocate

Plo. A.R.

APPEAL U/S 374(2) Cr.P.C.

(20)

XI-HC-22

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आदेश पत्रक

Cr A. 1293/97

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| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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**DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ**

**CRIMINAL APPEAL NO. 1293/1997**

**Appellant : Kamta Prasad**

**Vs.**

**Respondent : State of Madhya Pradesh**

Shri R.K. Jain learned counsel for the appellant.

Shri Akhil Mishra PL with Shri M.P.S. Bhatia learned P.L. for the respondent/State.

**ORAL JUDGMENT**

**(13.02.2006)**

**Per L.C. Bhadoo, J**

1. The accused/appellant has preferred this appeal under section 374 (2) of the Code of Criminal Procedure questioning the legality of the judgment of conviction and order of sentence dated 8.5.1997 passed by the Additional Sessions Judge, Korba in Sessions Trial No. 461/1996 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under section 376 of the IPC sentenced him to undergo RI for ten years and pay fine of Rs. 500/- and in default of payment of fine to further undergo RI for six

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months. The appellant has also been convicted under section 302 of the IPC and sentenced to undergo imprisonment for life. Both the substantive sentences were directed to run concurrently.

2. Case of the prosecution, in brief, is that Sadhram (PW-1) lodged a report P-1 in the police station Korba on 22.8.1996 at about 15.05 hours to the effect that he is residing near police station Korba working as a cobbler and there is one Godown of Lamba. In the corridor of that Godown one Durga was residing along with her two daughters namely Uma and Punia aged about 5 years and 3 years respectively, in the morning she used to leave for work and return in the evening and during that period the girls used to play in the verandah. On that day at about 2.15 to 2.30 hours Umabai came and informed him that one person had taken Punia, her younger sister (since deceased) in the Godown and she is weeping and crying, on which he along with Amar Singh went towards that side and peeped inside and saw that the accused Kamta Prasad was in naked position rubbing his penis on the vaginal part of Punia Bai. On calling him he stood up and when they saw Punia Bai, she was unconscious and swelling was present on her vaginal part. On receiving this report Police registered the crime under section 376 of the IPC, left for the scene of occurrence and prepared the site plan P-3. Investigating Officer wrote a letter to the Assistant Surgeon posted at a hundred bedded hospital Korba for giving his opinion whether rape has been committed on Punia Bai. Report of doctor is P-5. Thereafter, Punia Bai was hospitalized. However, on 25.8.1996 Punia Bai died in the hospital and Investigating Officer again

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asked for the opinion of the Assistant Surgeon under P-6 in which the doctor opined that the cause of death is head injury. The accused was also sent for medical examination under P-8 and after examining him the doctor gave his report P-5. Post mortem on the body of Punia Bai was conducted by Dr. D.K. Shrivastava PW-7 and the post mortem report is P-11. Panchnama P-18 was prepared by the Investigating officer after giving notice P-17 to the Panchas. After completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class Korba who in turn committed the case to the Sessions Judge, Bilaspur from where learned Additional Sessions Judge received the case on transfer for trial.

3. Learned Additional Sessions Judge after perusing the record and hearing the counsel for the parties was of the opinion that prima facie offences under sections 376 and 302 of the IPC are made out against the accused and therefore, framed charges against the accused, read over and explained to him. The accused abjured the charges.

4. Prosecution in order to establish the charges against the accused examined 17 witnesses. Statement of the accused was recorded under section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him.

5. Learned Additional Sessions Judge after hearing the arguments of the Additional Public Prosecutor and counsel for the accused/appellant convicted and sentenced the accused as mentioned in paragraph No.1 of this judgment.

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6. We have heard learned counsel for the parties and perused the evidence available on record.

7. Argument of the learned counsel for the appellant is two fold – first that in view of the medical evidence the charge of rape is not established and secondly that from the medical evidence the prosecution has failed to establish that the accused assaulted the deceased with an intention to cause her death.

8. On the other hand learned counsel for the State supported the impugned judgment of the trial Court.

9. As far as offence under section 376 of the IPC is concerned PW-1 Saadhram is the person who lodged the FIR and has stated that on the fateful day in between 2 and 2.30 girl Uma came to him and informed that one person was sitting on the corridor and was beating Punia Bai on which he along with Amar Singh went towards that side and saw that the younger girl was missing and they heard the screams of that girl from the Godown side, therefore, they entered the Godown and after lighting the match box they saw that the accused was rubbing his penis with the vaginal part of the girl. They immediately left for the police station, informed the police and lodged the report P-1. Punia Bai was aged about 3 years who died subsequently. PW-3 Uma, the elder sister of the deceased informed Sadhram about the accused and she has stated that accused Kamta Prasad took Punia inside the Godown. Thereafter, Saadhram went towards a hotel and informed the incident to the persons

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who were present there. PW-13 Amar Singh has corroborated the above evidence of Saadhram as well as of Uma and has stated that when they reached the Godown they saw that the accused was committing rape meaning thereby after placing Punia on his lap the accused was doing something and they saw that the blood was oozing out of the vaginal part of Punia Bai. Therefore, from the above ocular evidence it is established that the accused took Punia Bai inside the Godown and after removing his cloths he was seen keeping Punia Bai on his lap and was rubbing his penis with her vaginal part. PW-5 Dr. (Smt.) Rashmi Singh examined Punia Bai and has stated that on examination of the internal part of Punia Bai she found that there was a cut injury in the size of 1.5 cm at the 7 O'clock position which was on the lower part of the vagina near perineum and there was a fresh wound and blood was present on the perineum and in her opinion attempt to commit rape was made on the girl. PW-7 Dr. D.K. Shrivastava who conducted the post mortem on the body of Punia Bai has stated that the vaginal part of Punia Bai was torn in 7 O'clock position. As per the explanation to section 375 of the Indian Penal Code in order to constitute rape penetration is sufficient. As per the evidence of the doctors perineum was found injured in 7 O'clock position and injury was in the size of 1.5 cm and thus the above medical evidence shows that penetration in the genital part of the victim was there, therefore, we are of the considered opinion that the findings of the trial Court convicting the accused under section 376 of the IPC are based on legal evidence and to that extent we do not find any illegality or infirmity in the impugned judgment.

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10. So far as the offence under section 302 of the IPC is concerned, as per the evidence discussed above it is established that the accused took the girl inside the Godown and when the girl was recovered, she was found in an injured condition and medical examination was conducted by Dr (Smt.) Rashmi Singh. According to the doctor there was injury on the head and the deceased was in a serious condition, therefore, she was admitted in the hospital. In paragraph 6 of her evidence she has stated that Punia died on account of head injury on 25.8.1996. Dr. D.K. Shrivastava PW-7 conducted post mortem examination on the body of Punia Bai and stated that there was hematoma in extra dural and intra dural part of occipital and basal part of post brain suggestive of head injury with pale organ suggestive of anemia due to intracranial hemorrhage lead to shock, coma and death. Intra dural and extra dural hemorrhage shows that there was an internal injury and the death was on account of head injury as the accused was caught red handed while committing rape on Punia Bai and in that process Punia Bai received injury on her head who was aged about 3-4 years at the relevant time. The intention of the accused can be gathered from the manner in which the offence was committed, the facts leading to the offence, the parts of the body where the injury was inflicted and the nature of the injuries while committing rape on a three-four years old girl in a Godown, therefore, it is writ large that while causing such injury on the head of Punia Bai the accused had the intention to cause death of Punia Bai, therefore, we do not find any illegality or infirmity in the finding regarding conviction under section 302 of the IPC.

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| | 11. In the result the appeal is devoid of merit and the same is liable to be dismissed. It is accordingly dismissed.<br><br>Sd/-<br>L.C. Bhadoo<br>Judge | Sd/-<br>Dhirendra Mishra<br>Judge |

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